



Sheppard, Mullin, Richter & Hampton LLP
30 Rockefeller Plaza
New York, New York 10112-0015
212.653.8700 main
212.653.8701 fax
www.sheppardmullin.com

Rena Andoh
212.634.3092 direct
rando@sheppardmullin.com

October 20, 2020

MEMORANDUM ENDORSEMENT

Via ECF

The Hon. Judge Gabriel W. Gorenstein
Chief U.S. Magistrate Judge
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *U.S. ex rel. Raffington v. Bon Secours Health System, Inc. et al.*
Docket No. 1:10-cv-09650-RMB-GWG

Dear Judge Gorenstein:

We represent Defendants Bon Secours Health System, Inc., Bon Secours New York Health System, and Schervier Long Term Home Health Care Program (collectively, the “Defendants”). Pursuant to Your Honor’s Individual Rules of Practice, we write to respectfully request that Your Honor permit Defendants to file under seal an unredacted copy of Exhibit 1 to the Declaration of David Fischer.

Exhibit 1 to the Declaration of David Fischer includes Protected Health Information (“PHI”) of patients. Because it is 307 pages long and every page (other than the cover page) contains PHI and requires extensive redactions, we request that Your Honor permit the Defendants to just provide the unredacted version under seal (Defendants have also e-mailed an unredacted copy to opposing counsel pursuant to the Stipulation and Protective Order).

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-101, 110 Stat. 1936 (1996) (“HIPAA”), which imposes certain limitations and requirements upon the handling of PHI, as defined by 45 C.F.R. § 106.103, Defendants have an obligation to protect the PHI contained in the above-listed documents. Further, the Second Circuit has recognized the compelling need to protect the privacy interests of innocent third-parties. *See U.S. v. Amodeo*, 71 F.3d 1044, 1050-51 (2d Cir. 1995). “Such interests . . . are a venerable common law exception to the presumption of access.” *Id.*; *see also U.S. v. King*, No. 10-CR-122, 2012 WL 2196674, at *3 (S.D.N.Y. June 5, 2012) (recognizing that the interest in protecting the disclosure of medical records belonging to innocent third parties “overrides any public interest in the disclosures of

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these materials"). Accordingly, Defendants respectfully request a sealing order so that they might file an unredacted form of the above-listed documents under seal.

Application granted.

Respectfully submitted,



Rena Andoh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

So Ordered.


GABRIEL W. GORENSTEIN
United States Magistrate Judge
October 21, 2020

cc: Ross Brooks, Esq.

SMRH:4841-2207-6109.1